

REMARKS

This paper is responsive to the Office Action dated December 30, 2003, having a shortened statutory period expiring on March 30, 2004, wherein:

Claims 1-13, 33 and 35 were previously pending in the application;

Claims 1-5, 9-13, 33 and 35 were rejected; and

Claims 6-8 were objected to as being each dependent upon a rejected base claim, but indicated as being otherwise allowable if rewritten in independent form including the limitations of their respective base claims and any intervening claims.

Claims 1, 33, and 35 have been amended, new claim 38 has been added, and no claims have been canceled by this amendment. Accordingly, claims 1-13, 33, 35 and 38 are currently pending in the above-identified patent application.

Applicants wish to express their appreciation for the indicated allowability of claims 6-8.

Rejection of Claims under 35 U.S.C. §103

In the present Office Action, claims 1, 3, 10-13, 33 and 35 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,781,528 issued to Sato et al. (hereinafter, "**Sato**") in view of U.S. Patent No. 6,282,170B1 issued to Bentall et al. (hereinafter, "**Bentall**"), and further in view of U.S. Patent No. 5,920,257 issued to Commerford (hereinafter, "**Commerford**"). While not conceding that the Examiner's cited reference(s) qualify as prior art, but instead to expedite prosecution, Applicants have chosen to respectfully disagree and traverse the rejection as follows. Applicants reserve the right, for example, in a continuing application, to establish that one or more of the Examiner's cited references do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed.

Applicants respectfully submit 1) that the present Office Action fails to indicate that all elements of Applicants' claims are taught, shown, or suggested by the cited references as required to establish a prima facie case of obviousness under 35 U.S.C. §103, 2) that the present Office Action fails to provide adequate suggestion or motivation to combine or modify the cited references in such a way as to render Applicants' claimed invention embodiments obvious as required to establish a prima facie case of obviousness under 35 U.S.C. §103, 3) that elements of Applicants' claims are in fact not taught, shown, or suggested by the cited references, and consequently 4) that, even if combined, the cited references fail to teach, show, or suggest all elements of Applicants' claims.

With respect to Applicants' claim 1, the Examiner indicates in the present Office Action that *Sato* teaches, "a network comprising...a plurality of nodes...coupled via links", "sending a message from a first node to [a] second node...via [an] intermediate node", and "(dynamically establishing [said] virtual path by configuring a set of connections between the first node, the second node and intermediate nodes using links)." The Examiner further indicates in the present Office Action that *Bentall* teaches, "(sending a reply message in reply to said message over said intermediate link)." The present Office Action fails to specifically indicate however that, and if so, where any of the cited references teach, show, or suggest, "identifying said first node and said second node of said plurality of nodes", "dynamically discovering a physical path from said first node to said second node" and "dynamically identifying any intermediary nodes comprising said physical path" as required by 37 C.F.R. §1.104(c)(2). Applicants respectfully request that the Examiner indicate that portion of the cited references which are believed to teach, show, or suggest the described elements or limitations of Applicants' claim(s).

In the present Office Action, the Examiner further states that,

...it would have been obvious to one [of] ordinary skill in the art to modify the Sato et al. by using the feature of sending a message back to the sender after an alternate route via [an] intermediate link has been selected of Bentall et al.; and applying dynamically route restoration establishing a virtual path of Commerford to restore a virtual path automatically, dynamically when a link fails.

To establish a *prima facie* case of obviousness, the Examiner is required to show one or more prior art references which teach, show, or suggest, in conjunction with the knowledge of one of ordinary skill in the art at the time of Applicants' invention, all elements of Applicants' claim(s). Consequently, before the Examiner may combine the disclosures of two or more prior art references in order to establish a *prima facie* case of obviousness, there must be suggestion for doing so, found either in the references themselves or in the knowledge available to one of ordinary skill in the art. In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992) Applicants respectfully submit that the above-quoted portion of the present Office Action, while describing how the Examiner would combine the cited references of *Sato*, *Bentall*, and *Commerford*, provides no suggestion or motivation, within the references themselves or based upon knowledge of one of ordinary skill in the art at the time of Applicants' invention, why the cited references would be combined and therefore fails to establish a *prima facie* case of obviousness.

Moreover, Applicants submit that *Commerford* teaches a centralized system for restoring communications within a network as distinguished from the distributed systems of *Sato* and *Bentall*. More specifically, *Commerford* teaches at column 6, lines 17-18 that, "RTR Manager 32 also provides centralized control of the RTR 10 system." (emphasis supplied) Applicants respectfully submit that one of ordinary skill in the art would not have combined systems to provide both centralized and distributed control and therefore would not have looked to *Commerford* for combination with the teachings of either *Sato* or *Bentall*. Consequently, Applicants submit that the teaching of *Commerford* is incompatible with that of *Sato* and *Bentall* and that the Examiner's proposed combination is therefore improper.

Applicants further submit that elements of Applicants' claims are not taught, shown, or suggested by the cited references as indicated. More specifically, Applicants submit that the cited portions of *Bentall* fail to teach, show, or suggest, "sending a reply message in reply to said message over said intermediary links" as indicated in the present Office Action where the first and second nodes are "source" and "destination" nodes of a virtual path as required by Applicants' claim (Applicants' claim 1, as amended). In the present Office Action, Applicants' claimed "first node" and "second node" (Applicants'

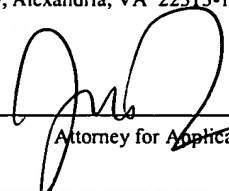
claim 1, as amended) are indicated as being taught by a sender node 63 and chooser node 64, respectively of *Bentall*.

Applicants respectfully submit that the “sender” and “chooser” nodes taught by *Bentall* are not the ultimate “source” and “destination” nodes of a virtual path as claimed by Applicants, but rather, for example, “two custodial nodes...at the end points of the failed link” (*Bentall*, Column 1, Lines 56-57, see also *Bentall*, Fig. 2). Applicants submit that neither *Sato* nor *Commerford*, insofar as Applicants are able to discern, teaches, shows, or suggests “sending a reply message” as claimed. In fact, the present Office Action specifically states that, “Sato et al. does not disclose the virtual path is established by sending a reply message in reply to said message over said intermediate links....” Applicants respectfully submit then that the addition of *Sato* and/or *Commerford* to the teaching of *Bentall* fails to cure the described infirmity. Consequently, Applicants respectfully submit that even if *Sato*, *Bentall*, and *Commerford* were combined as proposed in the present Office Action, the resultant combination would not teach, show, or suggest all elements of Applicants’ claims as indicated in the present Office Action.

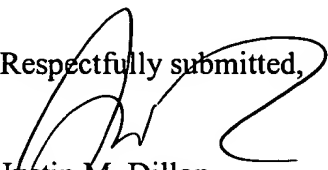
For at least the foregoing reasons, Applicants submit that Applicants’ claim 1, as amended, is allowable over *Sato*, *Bentall*, and *Commerford*, alone or in permissible combination and request that the Examiner’s current rejection(s) be withdrawn. Applicants’ claims 33 and 35 each contain one or more limitations substantially similar to those described with respect to Applicants’ claim 1 and are therefore allowable for at least those reasons stated for the allowability of claim 1. In addition to the Examiner’s reasons for allowability, all remaining claims, depending directly or indirectly from Applicants’ claims 1, 33, and 35, are similarly allowable over the Examiner’s cited references for at least the reasons stated herein. Applicants further respectfully submit that new claim 38 is allowable and request indication thereof.

CONCLUSION

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5097.

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|  _____ Attorney for Applicant(s) | <u>4-6-09</u> _____ Date of Signature |

Respectfully submitted,


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